

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID C. THACKER,

Plaintiff,

vs.

AT&T CORPORATION, AND
DIVERSIFIED CONSULTANTS INC.,

Defendant.

Case No.: 2:20-cv-00255-KJM-CKD

[~~PROPOSED~~] PROTECTIVE ORDER

Based upon the stipulation of the parties, Plaintiff David Thacker and Defendant AT&T Mobility, LLC, and good cause appearing, the following Protective Order is entered herein.

[Proposed] Protective Order

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2 1. PURPOSES AND LIMITATIONS – Local Rule 141.1(c)

3 Through discovery in this action, Plaintiff seeks production of contracts between
4 Defendant and third parties including but not necessarily limited to Diversified
5 Consultants, Inc. These contracts contain non-public, confidential and/or proprietary
6 information. Additionally, disclosure of certain information within these contracts may
7 place Defendant at a competitive disadvantage. For these reasons, Defendant has a need
8 to protect these documents from public disclosure and from use for any purpose other
9 than prosecuting this litigation. Given Plaintiff's pro se status, the parties seek to
10 formalize the protection sought by Defendant through Court order, with attendant review
11 and approval of their stipulated terms, rather than agreement between the parties.
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13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how
17 it is generated, stored or maintained) or tangible things that qualify for protection under
18 Federal Rule of Civil Procedure 26(c) and this Order.

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House
20 Counsel (as well as their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

23 2.5 Disclosure or Discovery Material: all items or information, regardless of
24 the medium or manner in which it is generated, stored, or maintained (including, among
25 other things, testimony, transcripts, and tangible things), that are produced or generated in
26 disclosures or responses to discovery in this matter.

27 2.6 Expert: a person with specialized knowledge or experience in a matter
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1 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
2 expert witness or as a consultant in this action.

3 2.7 House Counsel: attorneys who are employees of a party to this action.
4 House Counsel does not include Outside Counsel of Record or any other outside counsel.

5 2.8 Non-Party: any natural person, partnership, corporation, association, or
6 other legal entity not named as a Party to this action.

7 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
8 this action but are retained to represent or advise a party to this action and have appeared
9 in this action on behalf of that party or are affiliated with a law firm which has appeared
10 on behalf of that party.

11 2.10 Party: any party to this action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).

14 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this action.

16 2.12 Professional Vendors: persons or entities that provide litigation support
17 services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
19 their employees and subcontractors.

20 2.13 Protected Material: any Disclosure or Discovery Material that is designated
21 as “CONFIDENTIAL” pursuant to this Order.

22 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
23 from a Producing Party.

24
25 **3. SCOPE**

26 The protections conferred by this Stipulation and Order cover not only Protected
27 Material (as defined above), but also (1) any information copied or extracted from
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Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so

1 that other portions of the material, documents, items, or communications for which
2 protection is not warranted are not swept unjustifiably within the ambit of this Order.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in this
4 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
5 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
6 must be clearly so designated before the material is disclosed or produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic documents,
9 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
10 Producing Party affix the legend “CONFIDENTIAL” to each page that contains
11 protected material. If only a portion or portions of the material on a page qualifies for
12 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
13 by making appropriate markings in the margins). If only a portion or portions of the
14 material on a page qualifies for protection, the Producing Party also must clearly identify
15 the protected portion(s) (e.g., by making appropriate markings in the margins).

16 (b) for testimony given in deposition or in other pretrial or trial proceedings,
17 that the Designating Party identify on the record, before the close of the deposition,
18 hearing, or other proceeding, all protected testimony.

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive the
21 Designating Party’s right to secure protection under this Order for such material. Upon
22 timely correction of a designation, the Receiving Party must make reasonable efforts to
23 assure that the material is treated in accordance with the provisions of this Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time. Unless a prompt challenge to a Designating
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1 Party's confidentiality designation is necessary to avoid foreseeable, substantial
2 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
3 litigation, a Party does not waive its right to challenge a confidentiality designation by
4 electing not to mount a challenge promptly after the original designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process by providing written notice of each designation it is challenging and
7 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has
8 been made, the written notice must recite that the challenge to confidentiality is being
9 made in accordance with this specific paragraph of the Protective Order. The parties shall
10 attempt to resolve each challenge in good faith and must begin the process by conferring
11 directly (in voice to voice dialogue; other forms of communication are not sufficient)
12 within 14 days of the date of service of notice. In conferring, the Challenging Party must
13 explain the basis for its belief that the confidentiality designation was not proper and
14 must give the Designating Party an opportunity to review the designated material, to
15 reconsider the circumstances, and, if no change in designation is offered, to explain the
16 basis for the chosen designation. A Challenging Party may proceed to the next stage of
17 the challenge process only if it has engaged in this meet and confer process first or
18 establishes that the Designating Party is unwilling to participate in the meet and confer
19 process in a timely manner.
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21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
22 court intervention, the Designating Party shall pursue resolution of the dispute in
23 accordance with Civil Local Rule 251. The burden of persuasion in any such challenge
24 proceeding shall be on the Designating Party. Frivolous challenges, and those made for
25 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
26 other parties) may expose the Challenging Party to sanctions. Unless the Designating
27 Party has waived the confidentiality designation by failing to file a motion to retain
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1 confidentiality as described above, all parties shall continue to afford the material in
2 question the level of protection to which it is entitled under the Producing Party's
3 designation until the court rules on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this case
7 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
8 Material may be disclosed only to the categories of persons and under the conditions
9 described in this Order. When the litigation has been terminated, a Receiving Party must
10 comply with the provisions of section 13 below (FINAL DISPOSITION). Protected
11 Material must be stored and maintained by a Receiving Party at a location and in a secure
12 manner that ensures that access is limited to the persons authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
15 may disclose any information or item designated "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
17 employees of said Outside Counsel of Record to whom it is reasonably necessary to
18 disclose the information for this litigation and who have signed the "Acknowledgment
19 and Agreement to Be Bound" that is attached hereto as Exhibit A;

20 (b) the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
22 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (c) Experts (as defined in this Order) of the Receiving Party to whom
24 disclosure is reasonably necessary for this litigation and who have signed the
25 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the

subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by

the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 141. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format

1 reproducing or capturing any of the Protected Material.

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3 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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5 Dated: December 16, 2020

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7 CAROLYN K. DELANEY
8 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety
and understand the Stipulated Protective Order that was issued by the United States
District Court for the Eastern District of California on _____, 2020 in the
case of *David Thacker v. AT&T Corporation, et al.*, 2:20-cv-00255-KJM-CKD. I agree
to comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Eastern District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or
any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____